

ORIGINAL

United States District Court **5th** District **Texas**  
Name (under which you were convicted): **S. Navarro** Docket or Case No.: **4:13-CR-100-A**  
Place of Confinement: **FMCC** Prisoner No.: **46060-177**  
**UNITED STATES OF AMERICA** Movant (include name under which convicted)

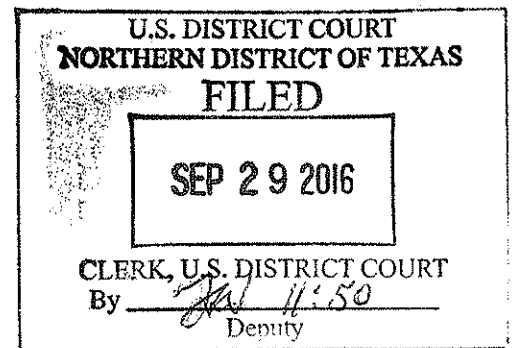
v.

**Sydney Melissa Navarro**

**MOTION**

**2255**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
U.S. District Court for Northern Texas  
501 W. 10th St., Room 310  
Fort Worth, Texas 76102  
(b) Criminal docket or case number (if you know): 4:13-CR-100-A
2. (a) Date of the judgment of conviction (if you know): Unknown  
(b) Date of sentencing: 12/23/2013
3. Length of sentence: 324 Months (Amend. 782 given to reduce to 275 Months.
4. Nature of crime (all counts): 21 U.S.C. 846  
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5. (a) What was your plea? (Check one)  
  
(1) Not guilty      ☒ (2) Guilty      (3) Nolo contendere (no contest)  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or



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indictment, what did you plead guilty to and what did you plead not guilty to? All the foresaid

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6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

~~Not Applicable~~

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No ☒ X

8. Did you appeal from the judgment of conviction? ☒ X Yes No

9. If you did appeal, answer the following:

(a) Name of court: 5th Cir. Northern Dist. Texas

(b) Docket or case number (if you know): Unknown

(c) Result: Denied

(d) Date of result (if you know): 10/1/2014

(e) Citation to the case (if you know): Unknown

(f) Grounds raised: Ineffective Counsel

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(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No ☒ X

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

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(3) Date of result (if you know):       N/A      

(4) Citation to the case (if you know):       N/A      

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(5) Grounds raised:       N/A      

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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

☒ Yes ☐ No

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11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: Same as listed for conviction

(2) Docket or case number (if you know): 4:16-GV-839-A

(3) Date of filing (if you know): 8/2016

(4) Nature of the proceeding: Motion 2255

(5) Grounds raised: Johnson v U.S.

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No ☒ X

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(7) Result: Denied

(8) Date of result (if you know): 9/8/2016

(b) If you filed any second motion, petition, or application, give the same information:

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(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No ☒ X

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Based upon the fore grounds that werent available until now.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Equitable Tolling

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#### **GROUND ONE: Tolling**

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The submission of Motion 2255 will set forth specific fundamental defects of procedure (s). The limitation period can be equitably tolled, **Tolliver, 211 F.3d. at 878**. The recently enacted discretionary laws that allow for such relief are the reason and basis for default and reasons not raised for the first time. As a final measure of relevancy such motion will:

1. Provide merit for the underlying claim.
2. Will present procedural issues and the matters we seek to raise as part of such.

#### **GROUND TWO: Challenge**

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A defendant can challenge the existence of a factual basis for her guilty plea; the court of appeals then reviews the challenge for plain error when the defendant fails to raise the argument before the court for the first time. **U.S. v Christenson, 653 F.3d. 697 (8th Cir. 2011)**.

#### **GROUND THREE: Fundamental Defects**

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The purpose and goal and means of submitting Motion 2255, is to redress fundamental defects that inherently denied the defendant of her rights to a fair hearing and her way through the judicial and prosecutorial process. As a result of these defects, the defendants conviction was by evidence and conclusion a **complete** miscarriage of justice. **U.S. v Addonizio, 442 US 178,185 (1979)**.

#### **GROUND FOUR: Irrelevant Factors**

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According to **US v Frage, 704 F.3d. 432,440 (5th Cir.2013)**, a district court errs when in fact it gives significant weight to

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factors of irrelevancy or of improper factors. Consideration or even reference to these acts can often influence and subsequently alter the plan of action and / or outcome of the defendants sentence. This is by far and acknowledged as such an unusual sentence practice that perhaps warrants closer scrutiny and a remand for resentencing under and only referencing and relying upon the proper factor.

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**GROUND FIVE: Equal Protection Clause**

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a defendant who undergoes prosecution is subject to scrutiny. However, the defendant is also guaranteed certain rights under such. In this case, the defendants sentence violated this clause, as it reflected disparate treatment between the defendant and other individuals and lacked any rational basis. *Pierce*, 409 F.3d. at 234.

**GROUND SIX:** The grounds by which a defendant can seek relief of their conviction and / or sentence is based upon challenging issues of constitutional or jurisdictional magnitude. As such, the defendant is presenting these facts and laying the grounds by which to seek relief accordingly. *U.S. v Willis*, 273 F.3d. 592,595 (5th Cir. 2001).

**GROUND SEVEN: Different Mannerism**

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Due to the circumstances, events and evidence presented, any reasonable juror could debate that such case should of been resolved in a different manner. *Slack v Mc Daniel*, 529 US 473, 484 (2000).

**GROUND EIGHT: Substantial Guidelines**

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The defendants sentence as well as the guidelines by which the sentence itself was governed by was based upon erroneous factors and as a result produced substantial guidelines rather than proced-



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and therefor altered the range and / or class of persons that the law punishes. **Schrivo, 542 US at 353.**

**GROUND NINE: USSG § 1B1.8**

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when looking at evaluating as well as applying the amounts of substance, the court misapplied the sentencing guidelines according to USSG §1B1.8 by including a larger quantity in computing her base level as apart of the conspiracy, but as such she should only be accountable for her **individual** amount during the time frame which she partook in the conspiracy; not the "intended" or "presumed" amount and thus even though the quantity was NOT reliably known to the government before. **US v Shacklett, 921 F.2d. 580 (5th Cir.)**

**GROUND TEN: 6th Amendment**

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The U.S. Constitution guarentees the defendant many rights including the 6th Amendment. The defendant was denied her right under the constitution as the amount of time the defendant received has 6th amendment significance. **Glover v U.S., 531 US 198,203.**

**GROUND ELEVEN: Ineffective Counsel**

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**Strickland v Washington, 466 US 668,688,694 (1984)** is a monumental case in which sets forth precedent for defendant to seek relief and be entitled to effective counsel. While at the same time, it also holds the attorney responsible for their actions and behaviors in **properly** representing their clients. In this particular case, the sentencing attorney didn't use reasonable probability and such needs to be sufficient in order to undermine the confidence of the outcome.

**GROUND TWELVE: Performed Competence**

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Counsel as a result of their actions performed competently in some respects but not in others which therefore deprived the defendant of effective counsel and assistance. **Thomas v Kulhman**, 255 F.Supp 2d. 99, 107 (EDNY 2003).

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**GROUND THIRTEEN: Effective Counsel**

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As with any defendant, they are entitled to effective counsel during plea negotiations and in this case, counsel was **NOT** effective as he had no variable or viable interest nor concern for the defendant in this matter. **Missouri v Frye**, 132 S.Ct. 1399 (2012).

**GROUND FOURTEEN: Within Range**

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In **Hill v Lockhart**, 474 US 52,57, (1985), the counsels advice wasn't within the range of competence demanded of an attorney in criminal cases.

**GROUND FIFTEEN: Fatico Hearing**

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The defendant is entitled to and has the option to request a Fatico Hearing that would of allowed the defendant to present and have evidence submitted and heard that possibly could of altered and or changed the outcome of both her plea and ultimately her conviction. **U.S. v Fatico**, 603 F.3d. 1053 (2d.Cir. 1979).

**GROUND SIXTEEN: 8th Amendment**

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The constitutional right to the 8th Amendment is procedural for any cases being prosecuted and heard before the court even though the ultimate source is substantive. **Beard v Banks**, 542 US 406, 408.

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**GROUND SEVENTEEN: DeNOVO Review**

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There are circumstance that justify a defendants sentence departure DeNOVO review due to missing elements and in such, certain elements are essential for conviction. The reasonableness standard review applies to **ALL** cases imposed after Booker. Accordingly, under newly discretionary sentence(s), cases are reviewed for reasonableness on erroneous facts or failure to adequately explain chosen sentence. As stated, "we review a district courts interpretation or application of the guidelines DeNOVO review and it's factual findings for clear error. **U.S. v Conner**, 537 F.3d. 480, 489 (5th Cir. 2008).

**GROUND EIGHTEEN: Conspiracy**

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A conspiracy is an agreement between 2 or more people to "conspire, plan or committ criminal conduct and to agree upon that". thus the conspiracy can **NOT** be based upon an **individual** decision without agreeing upon it with others. Conclusively, each member of a conspiracy is **legally** responsible for the crimes of their co- conspirators "until the conspiracy accomplishes it's goal or that the conspirator withdraws; " as such and concluding that an "individual" acted upon their **own** will and decision making, without **any** other person(s) then therefore a conspiracy **never** existed. **U.S. v Randall**, 661 F.3d. 1291, 1294 (10th Cir.2011).

**GROUND NINETEEN: USSG § 3B1.2**

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The defendant in this case was merely being paid to perform a certain task and therefore qualified as a minor participant under USSG § 3B1.2. The defendant had no proprietary interest in such, as a result she meets the five (5) criteria to consider her based upon the following:

**GROUND NINETEEN: Continued**

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1. The degree to which the defendant understood the scope and structure of criminal activity. The defendant had **NO** knowledge of the scope or structure as she was only aware of her own individual "job" or "task" in such conduct and which she was being paid to do.

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2. The degree to which the defendant participated in planning or organizing of criminal activity. The defendant had **NO** planning, organizing or leadership role of the activity, she simply "followed" orders.

3. The defendant neither exercised no decision-making authority nor did she influence such.

4. The nature the defendant partook in the act of conduct, were on an individual basis and was her own individual responsibility that she is accountable for.

5. The defendant only stood to benefit from her **individual** acts and nothing more.

As grounds for such consideration and reasoning, the defendant was clearly a minor role participant and should be afforded the review to qualify her under **U.S. v Quintero-Leyva**, 2016 WL 2865713 (9th Cir. 2016).

**GROUND TWENTY: Substantive Reasonableness**

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"Substantive" reasonableness of sentence is reviewed under an abuse of discretion, **U.S. v Delgado- Martinez**, *supra* 564 F.3d. at 754.

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**GROUND TWENTY-ONE: Questions Raised**

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There are various questions raised throughout these motion set forth, that does raise questions, cites and points out several rights that were denied the defendant alongs with procedural errors that occured. **Barefoot v Estelle**, 463 US 880 (1983); **Lennox v Evans**, No. 96-6041, (10th Cir. June 2, 1996.

**GROUND TWENTY - TWO : Review of Sentence**

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the court of appeals **must** review **all** sentences whether inside, just outside or significantly outside the guideline range under a deferential abuse - of - discretion. **Gall v U.S. , supra** 552 US at 41, 128 S.Ct. at 591.

**GROUND TWENTY - TWO:Egriegous Error**

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In **Fair v U.S. , 157 F.3d. 427, 430 (6th Cir.1998)**, based upon the foregoing fundamental defects in proceedings which ultimately resulted in a **complete** miscarriage of justice adn / or egriegous error violative of due process as was the case in this instance.

**GROUND TWENTY- THREE: 2255 Ruling**

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A hearing **must** be warranted if the motion set forth sets forth specific facts supported by competent evidence raising detailed and controverted issues of fact that if proved at a hearing would entitle defendant to relief. **U.S. v Aiello**, 814 F.2d 109, 113-114 (2d.Cir.1987).

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**GROUND TWENTY-FOUR: 2255 Hearing**

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According to *Gonzalez v U.S.*, *supra*, 722 F.3d. 118,130 F.2d. Cir. 2013), quoting 28 U.S.C. sub 2255,

~~In ruling on a motion under sub 2255, the district court~~  
is **required** to hold a hearing unless the motion and the files and the records of the case **conclusively** show that defendant is entitled to no relief.

**GROUND TWENTY-FIVE: Pro Se**

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In *haines v Kerner*, 404 US 519,520, 82 S.Ct.594, 30 L.Ed. 2d 652 (1972), that "pro se" pleadings are entitled to more liberal construction and that such pleadings should be given the benefit of those doubts raised in such proceedings. Appellant realizes that she is untrained in the numerous facets of the law and would request that she not be held to the same rigid standards of those required with formal training of the laws and of attorneys.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

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Yes No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Just recently was enacted.

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Not Applicable

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: basis for such just became available after the defendants conviction became final.

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**GROUND TWO:** Challenge

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Such ground for such just  
became precedent.

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**(c) Post-Conviction Proceedings:**

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(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

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Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

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Yes No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable  
Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Grounds for relief just became precedent.

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**GROUND THREE:** Fundamental Defects

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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**(b) Direct Appeal of Ground Three:**

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(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Laws were just recently enacted.

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable  
Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

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Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Laws were just recently passed and enacted.

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**GROUND FOUR:** Irrelevant Factors

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

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Yes No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Such precedent wasn't available.

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Not Applicable

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Such grounds in such motion just became available after the defendants sentence became final.

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13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: No, just the forementioned.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No X  
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Derrick Brown

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

**\*\* Same for all proceedings**

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No ☒ X

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No ☒ X

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you

must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. \*

The recently enacted USSG § 3B1.2 just set grounds for relief after the normal one- year time constraints. Both "cause for procedural default and actual prejudice" result from errors and actual process and recently enacted laws. Shaid, 937 F.2d. at 232.

Therefore, movant asks that the Court grant the following relief: For review, re-evaluation and re-consideration of all the facts presented and the errors that occurred according to procedures and rights guaranteed to the defendant therefore consideration for vacate and and / or reduction in the defendants sentence.

or any other relief to which movant may be entitled.

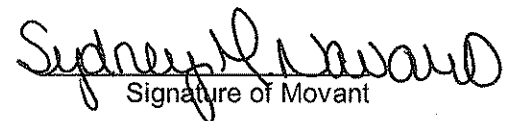
Signature of Attorney (if any)

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I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on September 26, 2016 (month, date, year).

Executed (signed) on 9-26-2016 (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

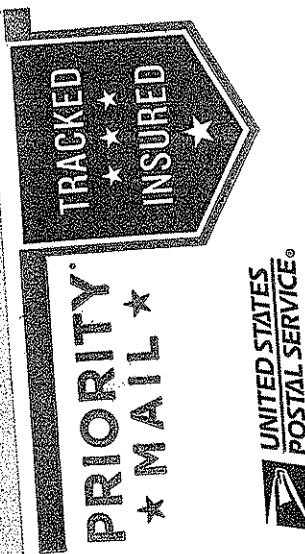
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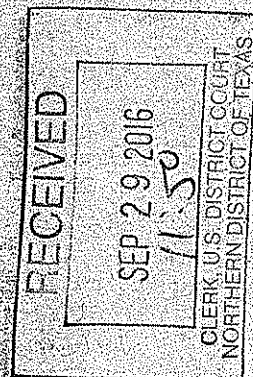
SYDNEY NAVARRO  
#46030-177

Federal Medical Center, Carswell  
P.O. Box 27137  
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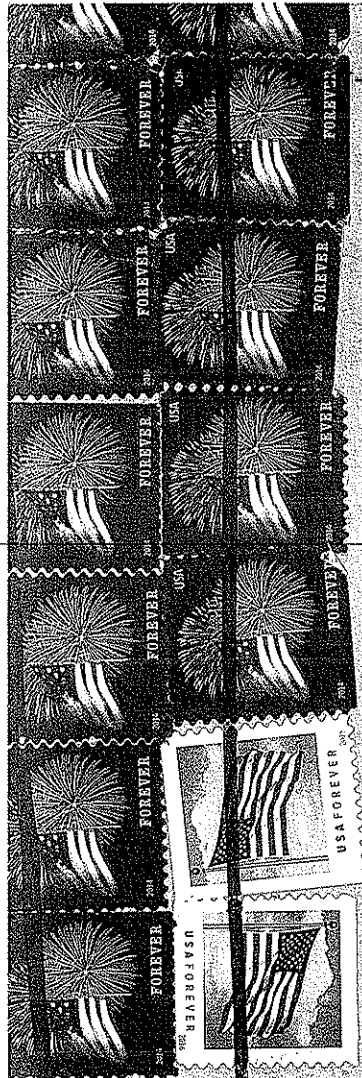
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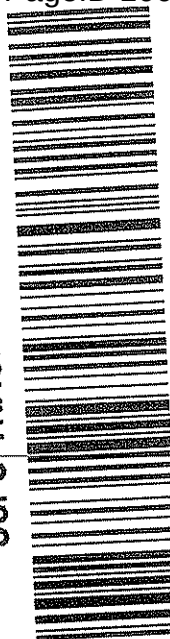
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